



April 1, 2016

California Department of Water Resources
Attn: Lauren Bisnett, Public Affairs Office
P.O. Box 942836
Sacramento, CA 94236

Submitted Electronically

RE: Draft Groundwater Sustainability Plan Emergency Regulations

Dear Ms. Bisnett:

Agricultural Council of California (Ag Council) appreciates the opportunity to comment on the Department of Water Resources' (DWR) Draft Groundwater Sustainability Plan Emergency Regulations (Draft Regulations). Ag Council represents approximately 15,000 farmers across California, ranging from small, farmer-owned businesses to some of the world's best-known brands. As such, many of our member companies and their farmer owners will be regulated under the Sustainable Groundwater Management Act (SGMA). Ag Council has been engaged in discussions over SGMA since its inception and also currently participates in DWR's Agricultural Advisory Group.

Ag Council values DWR's transparency in its regulatory development process. DWR's collaboration with stakeholders and other state agencies is prevalent throughout the draft regulations. Additionally, we thank DWR for allowing local control and jurisdiction over development of their groundwater plans. DWR has provided flexibility in many areas for localities to determine their future course with SGMA, and we support this draft regulation in this regard.

Ag Council has concerns with some areas in which DWR requires further obligations of localities than what was deemed necessary by SGMA. Many of these additional requirements will increase costs and draw out timelines of the regulation. Ag Council is hopeful that DWR will take the following issues into consideration when finalizing its regulations.

Cost

Ag Council urges DWR to minimize the cost of this regulation to the greatest extent possible. Reporting requirements of the Groundwater Sustainability Agencies (GSA) are outlined in great detail, and it is evident that local agencies will need to hire technical experts and consultants to complete the paperwork in order to comply with the regulation. DWR should allow GSAs to use existing data and measurement tools to create and comply with their Groundwater Sustainability Plans (GSP). Requiring the development of new information or monitoring tools will significantly add to the cost of the regulation in an unnecessary way.



Furthermore, the draft regulations create a possible “Coordinating Agency,” as a sole point of contact with DWR for the purposes of SGMA. While it is not clear whether or not this is a requirement, it potentially creates an additional governmental agency in addition to the GSAs. DWR should grant flexibility to the localities to self-appoint a member or board to interact with DWR. There is no need for another agency to be created for the sole purpose of communicating with DWR when this could be handled by the GSAs.

Timing

Implementation of SGMA is on a very aggressive timeline. Ag Council understands the constraints DWR and localities are under to comply with the regulation. In the regulation, DWR requires GSPs to be submitted with an open, public comment period of 60 days, however, DWR has two years to approve the plans. If DWR does not approve the GSP and notifies a GSA at the end of two years, it could run into the timeframe in which the State Water Resources Control Board (SWRCB) has the obligation to intervene, by the time any corrective action is taken. Ag Council urges DWR to either notify GSAs earlier of potential noncompliance or create another notification process that does not conflict with SWRCB intervention. The ambitious timelines of SGMA may require tighter turn-around times for each of the regulatory agencies as well.

Additionally, Ag Council is concerned with the ability of GSPs to comply with the California Environmental Quality Act (CEQA). If there are projects within various GSPs that require getting through the CEQA process, timing of completion of these projects could conflict with the SWRCB intervention plans. Going through CEQA is not an expeditious process. Furthermore, the act of going through CEQA will greatly add to the cost of each of the plans.

Ag Council urges DWR to consider implications to local governments and minimize these issues as much as possible. Ag Council also encourages DWR to consider the following matters specific to the proposed regulations as it finalizes them.

§352.4 Best Management Practices

SGMA does not require GSAs to adopt best management practices. If an agency chooses to do so, that should be within the discretion of that agency. So long as the GSA is meeting the requirements of SGMA through the development of its plans, meeting its milestones and eventually achieving sustainability within the required timeframes, the GSA should not be required to take on additional, potentially redundant, steps in order to fulfill its duties under SGMA. Best Management Practices should not be required as part of a GSP.

§354.10 Notice and Communication

Ag Council urges DWR to request that measures be taken by local GSAs to conduct specific outreach to all groundwater users potentially impacted by SGMA within their GSP. These outreach efforts can be included in subsection (e) and implemented into the GSA’s communication plan.



§354.18 Water Budget

SGMA only requires water budgets for the use of coordination agreements between multiple GSAs. The draft regulations proposed by DWR require water budgets for each GSP. This is beyond the scope of SGMA and will greatly add to the overall cost and regulatory burden for each GSA. Furthermore, subsection (b) requires historical data and trends outlining the demand for surface water supply and how historical conditions impacted the basins. While historical information will be useful, it may not be available within all basins at this time.

§354.22-§354.30 Introduction to Sustainable Management Criteria, Sustainability Goal, Undesirable Results, Minimum Thresholds, Measureable Objectives

Ag Council supports DWR's allowance of GSAs to define terms and goals such as "undesirable results," "minimum thresholds," "sustainability goal," and "measureable objectives" for each sustainable management plan. This allows the GSAs to have some flexibility to acknowledge differences in hydrology, land use plans and other regional conditions, while DWR provides parameters so that the terms are not too loosely defined.

§354.44 Projects and Management Actions

This section outlines the items to be included in the description of the projects and management actions adopted to meet measurable objectives and prevent undesirable results. GSPs must outline plans and relevant timetables for completion. Contingency plans also must be developed in the event that groundwater basins do not adequately respond. However, nothing describes the process or what to expect should a project fail to get the permitting approved in a reasonable timeframe to ensure it is consistent with the requirements of the GSP.

If a certain project exceeds the regulatory timetable due to permitting issues, does this automatically trigger SWRCB intervention? Ag Council urges DWR to highlight steps GSAs should take if permitting projects becomes an issue within implementation of GSPs.

§355.2 Department Review of Initial Adopted Plan

Subsection (e) states that DWR has two years to determine whether or not an initial GSP is adequate, conditionally adequate or inadequate. Ag Council is concerned that if DWR exercises its authority and waits the full two years to make this determination, the timetable is significantly shortened for SWRCB intervention. Therefore, a GSA could be operating under a GSP it thinks is adequate, but then learns the GSP is inadequate at a time when it may be too late to avoid SWRCB intervention. DWR should allow for a right to cure timeframe so GSAs have time to incorporate potential changes and resubmit the GSP for approval prior to SWRCB intervention.



§354.34 Monitoring Network

Ag Council agrees that a GSP should not adversely impact a neighboring basin. However, a GSA should not have to speculate as to whether or not an adjacent basin will be able to meet a sustainability goal as highlighted in subsection (a)(5). There are likely too many factors beyond a neighboring GSAs understanding in order to make an adequate determination. If negative impacts are underway, the basins should coordinate to minimize or mitigate those impacts and provide notice to DWR of their plans.

§355.4 Criteria for Plan Evaluation

This section highlights the parameter that will dictate whether or not a plan is adequate as well as DWR's assessment criteria in determining whether the GSP is likely to achieve the sustainability goal for the basin. The terms in this section are not egregious, but there is significant information lacking. The draft regulations do not highlight the steps taken that lead to SWRCB intervention.

Ag Council requests that DWR highlight some of the following information in this section:

- What specific actions will be taken to indicate that SWRCB is going to exercise its authority to intervene?
- What type of notification will a GSA receive prior to SWRCB intervention?
- How long is the SWRCB intervention process?
- What are the estimated costs of SWRCB intervention?
- What specific actions are needed in order to complete the SWRCB intervention process and allow GSA management of a regional area again?

Ag Council would welcome information on the SWRCB intervention process within the draft regulations. This would provide additional clarity to GSAs as to how DWR and SWRCB will interact and outline expectations relating to the intervention process so that localities can take the necessary steps to comply with SGMA and prevent SWRCB intervention.

Thank you for your time and consideration of our comments. If you have any specific questions, please do not hesitate to contact me at (916) 443-4887.

Sincerely,

Emily Rooney
President